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No. 610

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1944

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ANGELUS MILLING COMPANY, *Petitioner*

*vs.*

COMMISSIONER OF INTERNAL REVENUE

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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## BRIEF FOR THE PETITIONER

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## BRIEF FOR THE PETITIONER

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### OPINIONS BELOW

The first decision of the United States Processing Tax Board of Review of January 20, 1942 (R. 71), and its second decision of August 5, 1942, together with supporting and dissenting memoranda (R. 80), denying Respondent's motions to dismiss, are not reported. The opinion of the Tax Court of the United States (R. 91) is reported as 1 T. C. 1031.

The opinion of the Circuit Court of Appeals (R. 133) is reported at 144 F. (2d) 469.

## JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 24, 1944 (R. 139). The petition for a writ of certiorari was filed on October 18, 1944, and was granted on December 4, 1944. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTION PRESENTED

Whether the Petitioner may maintain its suit for the refund of processing taxes, where the claim for refund contained the nature of the claim, but not the data in support thereof, and where the Commissioner, through an examination of the claim on the merits, by a deputy collector, learned all of the facts and obtained all of the basic data, which, if presented in the claim, would have been an adequate basis for allowing a refund.

## STATUTES AND REGULATIONS INVOLVED.

The pertinent provisions of the statutes and regulations involved are presented in Appendix A of the "Appendices," pp. 1-12, printed as a separate document and filed with the Petition for the Writ of Certiorari.

## STATEMENT OF CASE

The facts are, as follows:

This case involves a claim for the refund of $145,-839.12, paid as processing tax on wheat, under the Agricultural Adjustment Act of May 12, 1933, as amended, declared unconstitutional in *Butler* v. *United States*, 297 U. S. 1.

The proceeding was initiated August 20, 1941, before the United States Processing Tax Board of Review (R. 7), for a review of the disallowance by the Commissioner of Internal Revenue, under date of May 23, 1941 (R. 40), of the Petitioner's claim for refund (R. 11-39).

The disallowance was based on two grounds: (1) that Petitioner was not the taxpayer, and (2) that the claim filed was not complete, in accordance with the statute and Treasury regulations. (R. 40.)

On October 4, 1941, Respondent filed a Motion for Better Statement of Claim (R. 42). On November 21, 1941, Petitioner filed an Amendment to Petition in Response to Motion for Better Statement of Claim (R. 49), having in the interim been given copies of Petitioner's Processing Tax Returns by the Commissioner, who had therefore refused to deliver such copies to Petitioner's counsel, on the ground that they were the returns of Niagara Falls Milling Co.

On November 26, 1941, Respondent filed a Renewal of Motion for Better Statement of Nature of Claim to apply to Petition as amended (R. 54). At the argument on the Motion, Petitioner was allowed to amend the Petition, and filed an Amended Petition December 29, 1941 (R. 63). The Respondent's

Motion was then denied, January 20, 1942. (R. 71.)

On February 16, 1942, Respondent filed a Motion to Dismiss, on the grounds that the claim filed was invalid, because incomplete, and that Petitioner was not the taxpayer, so that the Board lacked jurisdiction to review the Commissioner's disallowance of the claim for refund. (R. 72.) This motion was dismissed, after argument and the submission of evidence, on August 5, 1942 (R. 80), and on August 21, 1942, Respondent filed an Answer. (R. 82.)

On October 22, 1942, the Appeal was set for a hearing on the merits to be held on February 8, 1942. (R. 5.)

On October 21, 1942, the Revenue Act of 1942 became a law. Under Section 510 thereof, the life of the United States Processing Tax Board of Review terminated December 31, 1942, and The Tax Court of the United States thereafter had jurisdiction of all cases of that Board in their then *status*. (App. A, pp. 7-8.)

On January 29, 1943, Respondent filed a second Motion to Dismiss on Jurisdictional Grounds, this time with The Tax Court. (R. 86.) The Tax Court heard arguments thereon, received evidence, and on May 4, 1943, granted Respondent's Motion. (R. 91, 98.)

Petitioner thereupon, on July 27, 1943, filed a Petition for Review by the United States Circuit Court of Appeals for the Second Circuit (R. 99). That Court, on July 24, 1944, affirmed the decision of The Tax Court. (R. 133, 139.)

From the date of the filing of the Petitioner's claim for refund to the date of its disallowance, in-

cluding the examination of the claim on the merits by the Deputy Collector, the Commissioner contended *only* that Petitioner was not the taxpayer, and that Niagara Falls Milling Co. was the taxpayer. This being a fact to be proved at a trial on the merits, since Petitioner had alleged that it was liable for and had paid the processing tax, the Processing Tax Board of Review, The Tax Court, and the Circuit Court of Appeals accepted Petitioner's allegations on the subject as true and refused to dismiss on such ground.

The rejection of the claim by the Commissioner was also based on the ground that the claim for refund *on its face* was invalid, because incomplete and not in accordance with the statute and the pertinent Treasury regulations.

The question of a defect in the claim had never been raised *before* the Commissioner's letter of disallowance, and before Petitioner had refused to withdraw its claim to permit the Commissioner to make a settlement with Niagara Falls Milling Co., (R. 126-127, App. B, pp. 13-14), *after* the claim had been examined on the merits, and *after* the Commissioner had obtained all of the data lacking on the face of the claim. Several days were spent by representatives of the Commissioner examining the merits of the Petitioner's claim, and the question of a defect in the claim was never there raised. (R. 126-129, App. B. pp. 13-16.)

The usual letters, written all other claimants, requesting supplemental information and permitting its filing, to cure defects on the face of the claim, were never sent this Petitioner. (R. 66.)

*On the date on which the claim was rejected, the Commissioner, as a result of the examinations made by his agents, had in his possession all of the data lacking on the face of the claim, (R. 126-127, App. B, pp. 13-16).*

Had the Petitioner, on the day before the letter of rejection, gone through the futile gesture of amending the claim, incorporating therein the very facts and data then in the hands of the Commissioner, the Commissioner could not have questioned the defect in the claim, under decisions of this Court on that question, *infra.* pp. 30-31.

The reasons for not requesting supplemental information, and the reasons why any formal defect in the claim has been waived, and thereby cured, will be obvious from the facts brought to the attention of the Processing Tax Board of Review, The Tax Court, and the Circuit Court of Appeals.

The facts which follow, whether sworn to or supported by evidence filed, have never been controverted by other facts, because they are true and are known to be true by the Commissioner.

They are:

Petitioner is a corporation, organized and existing under the laws of the State of New York, with its principal office at Niagara Falls, New York. On June 13, 1933, the name of Petitioner was changed from "Middleport Flour Mills, Inc." to "Angelus Milling Company, Inc." Since that date, Petitioner has been known as "Angelus Milling Company, Inc." and "Middleport Flour Mills," the name "Angelus" connoting the brand of flour, and the name "Middle-

port" designating the locale of one of the flour mills. (R. 63.)

During the period July 9, 1933, to January 6, 1936, both dates inclusive, Petitioner was a processor of wheat, (R. 63), and, as such, liable for the processing tax.

Niagara Falls Milling Co., Inc., hereinafter called "Niagara," is a corporation, organized and existing under the laws of the State of New York. During the period July 9, 1933, to January 6, 1936, both dates inclusive, Niagara was a processor of wheat, (R. 63), and, as such, liable for the processing tax.

During the period July 9, 1933, to January 6, 1936, Niagara and Angelus had one and the same majority stockholder, a common President, a common set of officers, including a common Secretary (later Vice President), one J. W. Schwan, who signed all tax returns and checks in payment of tax, a common set of books of account, a joint bank account, and the same employees. (R. 66.)

When the flour of Petitioner was manufactured and sold, Petitioner was charged with the cost of wheat and the cost of manufacture, overhead, etc., and was credited with the selling price. The same procedure was followed with respect to the wheat and flour of Niagara. (R. 32, 33, 96.)

For the period July 9, 1933, to January 31, 1935, *joint returns*, on account of the processing of wheat by Petitioner and Niagara, at the mill at Lockport, were filed with the Collector of Internal Revenue for the *28th District* of New York (R. 110, 113-120), and tax in the sum of $324,016.25, was paid him on account of such processings. (R. 63-64.)

For the period February 1, 1935, to November 30, 1935, returns were filed, in the name of Niagara, on account of the processings of wheat by both Petitioner and Niagara, at the mill at Lockport (R. 110-111, 121) and at the mill at Middleport (R. 111, 123), with the Collector of Internal Revenue for the 28th District of New York, and tax, in the sum of $110,-029.02, was paid him on account of such processings. (R. 64.)

All of the foregoing returns were kept in one file in the Bureau of Internal Revenue, where counsel for Petitioner obtained them, after the filing of the Petition with the Processing Tax Board of Review, the files of the two corporations being together in said Bureau, in the custody of the same person.

Of the aforesaid sums paid as processing tax on wheat, the following amounts were paid said Collector, on the dates below set forth, on account of the processings of wheat by Petitioner, listed below, out of monies belonging to Petitioner, (R. 64-65):

| Date | Units Processed (in bushels) | Tax Paid |
|---|---|---|
| 1933 | | |
| July-August | 19,505 | $ 862.02 |
| September | 20,619 | 3,489.05 |
| October | 24,368 | 5,447.69 |
| November | 21,728 | 6,185.57 |
| December | 26,067 | 7,728.11 |
| 1934 | | |
| January-February | 63,797 | 15,991.82 |
| March | 18,471 | 9,933.35 |
| April-May | 52,888 | 16,866.78 |
| June | 28,144 | 8,663.05 |
| July | 21,920 | 8,866.82 |
| August | 35,475 | 8,696.02 |
| September | 27,674 | 8,947.71 |
| October | 27,438 | 9,140.43 |
| November | 22,459 | 9,078.89 |
| December | 36,091 | 7,585.26 |
| 1935 | | |
| January-February | 44,248 | 13,862.57 |
| March-April | 47,597 | 13,864.29 |
| May | 39,009 | 9,549.69 |
| June | 21,237 | 6,279.70 |
| July | 21,143 | 5,563.14 |
| August | 24,998 | 4,034.66 |
| September | 32,852 | 5,274.70 |
| October | 30,187 | 840.67 |
| | 706,906 | $186,751.99 |

On or about June 23, 1936, *joint claims for refund* were filed, on Form 843, by *"Niagara Falls Milling*

*Co., Inc., and/or Middleport Flour Mills, Inc.*" with the Collector of Internal Revenue for the *28th District* of New York, for the refund of processing taxes on wheat paid by Petitioner and Niagara, in the total sum of $454,045.27 (Exhibit A-1, A-2 and A-3, attached to the Petition), (R. 11-19), paid to him on account of the processing of wheat by them. These claims, as all other claims filed on Form 843, were disregarded, while the decision in *Butler* v. *United Stats, supra,* was being awaited for several months thereafter, and finally, after the passage of the Revenue Act of 1936, as all such claims were thereafter required to be filed on P. T. Form 79.

On or about June 30, 1937, Niagara filed a claim, on P. T. Form 79, for the refund of processing tax on wheat, in the sum of $436,231.73, with the Collector of Internal Revenue for the *28th District* of New York, paid to him on account of the processings of wheat by Niagara and by Petitioner. *This claim was complete on its face,* and contained *margin data* taken from the common books of account of Niagara and Petitioner. (Exhibit B attached to the Petition.) (R. 20-29.)

On or about August 15, 1938, Petitioner filed a claim, on P. T. Form 79, for the refund of $145,839.12, paid out of its monies, on account of the processings of wheat by it, with the Collector of Internal Revenue for the *28th District* of New York, designating this claim as "*Amendment to Claim.*" (Exhibit C attached to the Petition) (R. 30-39), and showing Petitioner's interrelationship with Niagara. (R. 32-33.)

Schedule A, which contained the volume of sales

made and the taxes paid, on account of processings of wheat by Petitioner and Niagara, bore the following caption—(R. 32):

> "Allocation of Refund Due Niagara Falls Milling Company and Middleport Flour Mills, Inc. (Now Angelus Milling Co., Inc.)"

There followed an explanatory statement respecting the two corporations and the allocation to be made of the refund of taxes claimed. (R. 32-33.)

Under date of November 18, 1938, the Internal Revenue Agent in Charge of the Internal Revenue Service at Buffalo, New York, the *28th Collection District* of New York, through a General Deputy Collector, in connection with the investigation of the claim of Niagara, sent to Mr. Harry Dickinson, the President of both Petitioner and Niagara, the following letter:

> "In connection with the investigation of Claim for refund under Title VII, Revenue Act of 1936—Claim F5899;[1] you are requested to allow examination of the following records of the Middleport Flour Mills, Inc., and Angelus Flour Mills, Inc.:
>
> General Ledgers of both corporations for the years 1935 and 1936.
> Minute Books of both corporations.
>
> "In view of the fact that the investigation will be completed within the next few days I

[1] Claim of Niagara (R. 20-29)

would request that these records be made available to me on Monday, November 21, at Room 1011, White Building, Buffalo, New York.

Respectfully,

J. BERNARD LEIBEN,

JBL:E *General Deputy Collector.*"

(R. 125, App. B, p. 15.)

This letter was occasioned by the fact that the *Commissioner's agent* knew, from the returns filed, taxes paid, and claims filed, all in the same collection district, that Middleport, Angelus and Niagara were interrelated. The Commissioner also knew, as this letter indicates, that the two companies had a set of books of account, a bank account, and officers, which required an examination in connection with the claim of either. Naturally, they were one and the same.

On or about September 4, 5, 6, and 7, 1940, the aforesaid J. Bernard Lieben, Deputy Collector of Internal Revenue, *28th District* of New York, and other representatives of Respondent, conferred with the accountant for Petitioner, respecting Petitioner's claim for refund, fully investigating said claim, and as a result of such conference and examination, obtained, from the common books of account of Petitioner and Niagara, all of the basic data and figures required to complete Petitioner's claim. (R. 126-129, App. B, pp. 13-16.)

Consideration of Petitioner's claim on the merits was, therefore, the natural result of the Bureau's examination of Niagara's claim and of the common books of account and bank account of the two com-

panies, which followed Lieben's letter of November 18, 1938.

Under date of May 23, 1941, the Commissioner of Internal Revenue, without having at any time requested from Petitioner any additional information, *in view of the complete information in his possession, a copy of which was obtained by Petitioner's accountant,* (R. 126-129, App. B, pp. 13-16), and without the usual conferences in Washington, granted in every other such known claim (pp. 32-33, infra), in a letter sent by registered mail, disallowed the claim for refund of Petitioner filed August 15, 1938, in its entirety (Exhibit D attached to Petition) (R. 40), relying on a technicality, *and for the first time complaining of the invalidity of the claim for refund, because incomplete.*

On that date, while *the books* of Petitioner and of Niagara were involved in bankruptcy proceedings involving Niagara (R. 126-129, App. B, pp. 13-16), they had at all times been available to the Commissioner, and he had obtained therefrom all of the data which the claim of Petitioner lacked.

Prior to filing a petition for a review of the disallowance of the claim for refund by the Commissioner with the Processing Tax Board of Review, counsel for Petitioner sought to obtain from the Commissioner copies of the processing tax returns of Petitioner and Niagara. Such copies were refused Petitioner's counsel, for the reason given that they were in the file of Niagara and not in that of Petitioner. Counsel finally obtained such copies and filed them with the Board, in connection with Re-

spondent's Motion for Better Statement of Claim. (R. 47, 110-111, 113-124).

The foregoing facts, none of which can in good faith be denied—the filing of joint processing tax returns, the filing of joint and several claims for refund and of separate claims for refund, the separate claim of Niagara being complete, the separate claim for refund of Petitioner, while not complete, showing the interrelationship with Niagara, the Bureau procedure as to these returns and as to the claims for refund, all in the same Collection district, the examination by the Commissioner of the claims for refund of both Niagara *and* Petitioner, on the merits, and the obtaining by the Commissioner of the basic data lacking on the face of the claim of Petitioner, definitely show:

1. That, from 1933 to 1936, and 1937 to 1941, the Commissioner knew of the interrelationship of Niagara and Petitioner.

2. That an examination of Niagara's claim for refund on the merits, which claim contained Petitioner's basic data, was a practical impossibility without also examining Petitioner's claim for refund on the merits.

3. That Petitioner's claim for refund was examined on the merits, in 1940, at which time the Commissioner obtained all of the data not supplied on the face of the claim, which data supported the refund.

4. That, if all of the claims for refund filed be considered together, Petitioner's claim is not defective, as Niagara's claim contains all of the margin data required.

5. That, in any event, the Commissioner waived every defect in Petitioner's claim for refund, regardless of his letter of disallowance, and regardless of the fact that the usual hearings or opportunity to supplement the claim were not accorded Petitioner, by examining Petitioner's claim on the merits and obtaining all of the required data lacking on the face of the claim.

## SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

1. In failing to hold that, having examined Petitioner's claim for refund on the merits, and having obtained all of the margin data lacking on the face of the claim, the Commissioner waived any defect in Petitioner's claim.

2. In holding that, after Petitioner had filed a timely claim for refund, which was considered on the merits, the Commissioner, by such an examination, which resulted in his obtaining all of the data lacking on the face of the claim, did not waive any defect in the form of the claim, but the Petitioner was required, even then, to amend as to any defect in the form of the claim, before its rejection.

3. In holding that, in dealings with Government officials, Petitioner could not rely upon the same rules of equity, justice and fairness which apply as between individuals, but could be misled into not amending a claim, defective as to form, until it was rejected, and when it was too late to amend.

4. In failing to hold that, if the claim for refund of Niagara and Petitioner be considered together,

Petitioner's claim was not defective in form, or any such defect was waived.

5. In dismissing Petitioner's claim for refund for lack of jurisdiction, and in refusing to order a hearing by the Tax Court on the merits.

## SUMMARY OF ARGUMENT

### I.

*The Commissioner, having examined Petitioner's timely claim for refund on the merits, and having obtained all of the data lacking on the face of the claim, waived any formal defect in the claim, and Petitioner is entitled to a trial by the Tax Court on the merits.*

Petitioner and Niagara Falls Milling Company, herein called "Niagara," were New York corporations, engaged in processing wheat, from 1933 to 1936. As such, they were liable for, and paid, processing taxes.

The two corporations had common officers, a common set of books, and a common bank account.

From July, 1933, to January, 1935, the two corporations filed *joint* processing tax returns. From February to December, 1935, Niagara filed such returns for both corporations. The processing taxes due were paid out of their joint account.

In January, 1936, the two corporations filed joint and several claims for the refund of the processing taxes paid, on Form 843.

In June, 1937, Niagara filed a claim for the refund of the processing taxes paid by both corporations, on

Form P. T. 79. In August, 1938, Petitioner filed an "Amendment to Claim" for the refund of the processing taxes paid by it, on Form P. T. 79. Both claims on Form P. T. 79 were timely filed. Niagara's claim was complete; it contained all of the margin data required by the form. Petitioner's claim was not complete, in that it lacked the factual data required by the applicable Treasury regulations and Form P. T. 79.

The Commissioner examined Niagara's claim (P. T. 79) on the merits and agreed to a partial refund of the processing taxes paid. The Commissioner also examined Petitioner's claim (P. T. 79) on the merits, using the same books, records and data as were used in examining Niagara's claim, and he obtained all of the facts and data lacking in Petitioner's claim.

Upon Petitioner's refusal to withdraw its claim, after he had reached a settlement of Niagara's claim, the Commissioner rejected Petitioner's claim, on the grounds (1) that Petitioner was not the taxpayer, a question not involved herein, and (2) that Petitioner's claim was invalid, because the data in support thereof was not submitted with the claim.

All the returns were filed with, all the processing taxes were paid to, all the claims for refund were filed with, and all examinations of the claims were made by, the Collector for the *28th District* of New York. All of these documents, of both corporations, were kept together as one file in the Bureau of Internal Revenue.

Petitioner urges—upon the basis of these established facts—that the Commissioner waived any formal defect in Petitioner's claim for refund.

Insofar as the statute is concerned, the case is no different than any other tax case, (see Statutes, App. D, pp. 50-55 and Regulations, App. E, p. 60). The rule urged by Petitioner is not prohibited by the statute.

Petitioner has complied with Secs. 3772 and 3774 of the Internal Revenue Code, so that the Commissioner has at all times had the power to make the refund claimed, under Sec. 3770 thereof.

The rules applied by this Court, in respect of the power to amend claims for refund, in its many decisions cited herein, are not applicable to the facts of this case. No question of an untimely amendment of a claim for refund is involved.

If all of the evidence in support of a claim for refund is not filed with the claim, under oath, the Commissioner has the matter completely in his hands.

The Commissioner may reject the claim promptly. *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62; *Memphis Cotton Oil Co.* v. *United States*, 59 F. (2d) 276; and he has done so. *Morristown Knitting Mills* v. *United States*, 42 F. Supp. 817.

The Commissioner may give the claimant for refund every opportunity to present factual data lacking on the face of the claim, in his endeavor to settle, rather than litigate, a case, the very purpose of the regulations. He frequently does so. *United States* v. *Memphis Cotton Oil Co., supra; Bonwit Teller & Co.* v. *United States*, 283 U. S. 258; *Samara* v. *United States*, 129 F. (2d) 594, cert. den. 317 U. S. 686; *United States* v. *Elgin National Watch Co.*, 66 F. (2d) 344; *Jaubert Bros.* v. *United States*, 50 F. Supp. 366; *Ney* v. *United States*, 33 F. Supp. 554.

If the claimant relies upon the legal conclusion that it is impossible to prove the claim, it must be rejected. *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337; *Landrum* v. *Commissioner*, 122 F. (2d) 857; *Tennessee Cons. Coal Co.* v. *Commissioner*, 117 F. (2d) 452; *Lee Wilson & Co.* v. *Commissioner*, 111 F. (2d) 313, 123 F. (2d) 232; *Morristown Knitting Mills* v. *United States, supra.*

If the claimant refuses to produce such evidence as he has, the Commissioner must reject the claim. *Landrum* v. *Commissioner, supra; Tennessee Cons. Coal Co.* v. *Commissioner, supra; Lee Wilson & Company* v. *Commissioner, supra.*

If the claimant ignores repeated requests to furnish evidence lacking on the face of the claim, he is not to be heard to complain, if his claim is rejected, *Samara* v. *United States, supra; Jaubert Bros.* v. *United States, supra.*

The Commissioner may investigate the claim for refund on the merits, despite the fact that the claim is defective in form. If he does so, and if, at that time, he obtains all of the facts and data lacking on the face of the claim, he should be deemed to have waived any formal defect in the claim.

The Commissioner has the power expressly to waive a formal defect in a claim, *Tucker* v. *Alexander*, 275 U. S. 228, and by implication, *Bonwit Teller & Co.* v. *United States, supra.*

While the question involved herein has never been decided by this Court, *United States* v. *Andrews*, 302 U. S. 517, and *United States* v. *Memphis Cotton Oil Co.*, supra, the lower courts, on the basis of the decisions of this Court in *United States* v. *Memphis*

*Cotton Oil Co., supra; Bonwit Teller & Co.* v. *United States, supra;* and *Tucker* v. *Alexander, supra,* have practically uniformly held that, if the Commissioner examines a claim on the merits and obtains all of the facts, he is deemed to have waived the requirement that all of the evidence accompany the claim for refund under oath. *Memphis Cotton Oil Co.* v. *United States,* (Ct. of Cls.) 59 F. (2d) 276; *Bethlehem Baking Co.* v. *United States,* (CCA 3rd) 129 F. (2d) 490; *United States* v. *Humble Oil & Refining Co.,* (CCA 5th) 69 F. (2d) 214; *United States* v. *Elgin National Watch Co.,* (CCA 7th) *supra; Reynolds* v. *McMurray* (CCA 10th) 77 F. (2d) 740; and *Howbert* v. *Penrose,* 38 F. (2d) 577. Several district courts have adopted the same rule. See *Bricker Baking Co.* v. *Rothensies,* 46 F. Supp. 742; *Cudahy Packing Co.* v. *United States,* 37 F. Supp. 563, reversed on other grounds 126 F. (2d) 429; *Hutzler Bros. Co.* v. *United States,* 33 F. (2d) 801; *Ney* v. *United States,* 33 F. Supp. 554; *S. & R. Grinding & Machine Co.* v. *United States,* 27 F. Supp. 429; *Shotwell Mfg. Co.* v. *Harrison,* 27 F. Supp. 422; *Conrod Exchange, Inc.* v. *Henricksen,* 27 F. Supp. 427; *University Distributing Co.* v. *United States,* 22 F. Supp. 794; *United States Paper Exports Assn.* v. *Bowers,* 6 F. Supp. 735; *Weihman* v. *United States,* 4 F. Supp. 155 and *Union Trust Co. of Pittsburgh* v. *McCaughn,* 24 F. (2d) 459.

The equities upon which this Court based its decision in *Jefferson Electric Mfg. Co.* v. *United States,* 291 U. S. 386, which is followed in *Anniston Mfg. Co.* v. *United States, supra,* in upholding Title VII

of the Revenue Act of 1936, require the conclusion urged by Petitioner.

II.

*If the claims for refund of Petitioner and Niagara be considered together, Petitioner's claim is not defective, or again any defect in form has been waived.*

The processing tax returns and all of the claims for refund of Petitioner and Niagara, together with supporting proof, were part of a single file in the Bureau. Niagara's claim for refund of June 30, 1937, was complete; it contained the margin data required, taken from the common books and records of Niagara and Petitioner. If Niagara's claim be considered—not as Petitioner's claim—but as part of the proof lacking in Petitioner's claim, their relationship being clearly known to the Bureau, then again should the Commissioner, after his examination of the claim on the merits, be deemed to have waived any formal defect in Petitioner's claim, upon the basis of the cases cited under Point I, pages 19 to 20, *supra*.

## ARGUMENT

I.

*The Commissioner, having examined Petitioner's timely claim for refund on the merits, and having obtained all of the data lacking on the face of the claim, waived any formal defect in the claim, and Petitioner is entitled to a trial by the Tax Court on the merits.*

A summary of the facts, considered by Petitioner

to be most pertinent, will be helpful to a consideration of the law.

Petitioner and Niagara were two New York corporations, engaged in milling wheat, from 1933 to 1936. (R. 63.) As such, they both were liable for, and together paid, processing taxes, under the Agricultural Adjustment Act, from July, 1933, to December, 1935, in the total sum of $436,231.73. (R. 26-29.)

The two corporations had a common set of officers, a common set of books, a common bank account, and were controlled by a common stockholder, who was their President. (R. 66.)

For the period July, 1933, to January, 1935, the two corporations filed *joint* processing tax returns with the Collector for the 28th District of New York (R. 110, 113-120), and paid their respective processing taxes out of their joint bank account to that Collector. (R. 63-64.)

For the period February, 1935, to December, 1935, Niagara filed returns of processings for both corporations with (R. 110-111, 126), and paid the tax due by both, out of their joint account, to the same Collector. (R. 64.)

After the decision in *Butler* v. *United States*, *supra*, and on January 29, 1936, the two corporations filed joint and several claims for refund of the processing tax paid by them, on form 843, with the same Collector. (R. 11-19.)

At that time, due to the many suits pending, injunctions theretofore unheard of, and other attempts to obtain refunds of the processing tax, or to defeat collection, and the attack upon Section 21 (d) of

the Agricultural Adjustment Act, in *Rickert Rice Mills* v. *Fontenot*, 297 U. S. 110, and other cases, an amendment to existing law was being considered, and such claims were either being ignored or being rejected automatically.

On June 22, 1936, the Revenue Act of 1936 became law, and processing taxpayers under the Agricultural Adjustment Act were, by Title VII of the Revenue Act of 1936, given until June 30, 1937, App. A, p. 2, (extended to December 31, 1939, by the Revenue Act of 1939, App. D, p. 59) to file their claims for refund. The statute provided, (Sec. 903), that "all evidence relied upon in support of such claim" shall be clearly set forth under oath."

Regulations 96 and Form P. T. 79, issued pursuant to the statute, required that margin data, from which to determine the economic burden of the tax, and other factual data, be set forth in the form (P. T. 79) provided for the claim for refund. (App. A, pp. 8-9, R. 30-39.)

On June 30, 1937, Niagara filed, with the same Collector for the 28th District of New York, a claim for refund of all of the processing tax paid by both Petitioner and Niagara, in the sum of $436,231.73. That claim contained all of the margin and other data required by the regulations. (R. 20-29.)

On August 15, 1938, Petitioner filed a so-called "Amendment to Claim" for the refund of $145,-839.12, being that part of the total tax paid by both corporations, which it considered had been paid by it, with the same Collector. The claim contained no margin data. It did contain an asserted allocation of the refund allegedly due Petitioner and Niagara,

and quite clearly called attention to their interrelationship, already known to the 28th Collection District for New York. (R. 30-39.)

This claim, under then existing law (Revenue Act of 1936), was filed too late (June 30, 1937), but nothing was said about that fact.

Notwithstanding, under date of November 18, 1938, the President of the two corporations received the following letter (R. 125; App. B, p. 15):

Treasury Department
Internal Revenue Service
Buffalo, N. Y.

Office of
Internal Revenue Agent in Charge
200 U. S. Courthouse, Niagara Square
Buffalo Division

November 18, 1938

Mr. Harry Dickinson
Lockport, N. Y.

Sir:

In connection with the investigation of Claim for refund under Title VII, Revenue Act of 1936—Claim F5899, you are requested to allow examination of the following records of the Middleport Flour Mills, Inc., and Angelus Flour Mills, Inc.:

General Ledgers of both corporations for the years 1935 and 1936.
Minute Books of both corporations.

In view of the fact that the investigation will be completed within the next few days, I would

request that these records be made available to me on Monday, November 21, at Room 1011, White Building, Buffalo, N. Y.

Respectfully,

J. BERNARD LIEBEN,

JBL:E *General Deputy Collector.*

The claim of Niagara was examined on the merits, in September, 1938, in July, 1939, and in September, 1940, the Deputy Collector using therefor the joint or common books of account and records of Petitioner and Niagara. (R. 126, App. B, pp. 13-14.)

On June 29, 1939, the Revenue Act of 1939, extending the time for the filing of claims for the refund of processing taxes, became law, and the late claim of Petitioner (filed in 1938) became valid. (App. D, p. 59.)

Accordingly, in September, 1940, at the same time as he was making a final examination of the claim of Niagara, the Deputy Collector for the 28th New York District, Lieben, examined the claim of Petitioner, which then, as to time, was valid. (R. 126-129, App. B, pp. 13-16.)

The only objection at that time made to Petitioner's claim for refund was that, in the Deputy Collector's opinion, Petitioner was not the taxpayer, contrary to the fact, and a fact to be established in a review on the merits.

Niagara, then being in bankruptcy, apparently made a favorable settlement. At least, the Deputy Collector, having made such settlement, sought to have Petitioner withdraw its claim at that time. Petitioner refused to do so. (R. 126-127, App. B, p. 14.)

Then, the Commissioner without requesting further factual data, since he had it all, and without requesting that Petitioner swear to it, since the Collector himself had compiled the necessary data, summarily rejected the claim, on the grounds (1) that Petitioner was not the taxpayer, and (2) that the claim was incomplete and failed to comply with the statute and Treasury regulations. (R. 40.)

*On that date, May 23, 1941, the Commissioner had every bit of the data lacking on the face of Petitioner's claim, margin data and all.*

In fact, a copy of the working papers of the Deputy Collector, taken from Petitioner's books and records, was obtained by the accountant for Petitioner before Petitioner's claim for refund was rejected. (R. 126-129, App. B, pp. 13-16.)

These are the pertinent facts, simply stated, taken from the Exhibits attached to the Petition, the Amended Petition, and the affidavits and other evidence filed with the Tax Court by Petitioner. Counsel for Respondent was given the opportunity, by the Judge of the Tax Court who heard the Motion to Dismiss, to submit affidavits in contradiction of those filed by Petitioner, and failed to do so, because the facts are as stated by Petitioner.

While there are some facts in the instant case which will not be present in the usual case, the main question involved can apply to thousands of cases. It is—If the Commissioner has before him, for a reasonable period of time, a claim for refund timely filed, but defective in form, in that it fails to contain factual data required by the Treasury regulations, and examines that claim on the merits, obtaining all

of the proof lacking on the face of the claim, after the statutory period of limitations has run is he deemed to have waived the defects in the form of the claim?

The eminently fair and reasonable answer would seem to be "Yes," unless the statute forbids, or some impelling reason of administrative necessity requires, a negative answer.

The statute involved does not so forbid. In essence, it is the same as the statute applicable to *all* refunds—with only one exception of substance, and even in that respect, it is like several other statutes.

True, the statute provides that—"All evidence relied upon in support of such claim shall be clearly set forth under oath"—(Sec. 903, Revenue Act of 1936, App. A, p. 2)—a provision not found in other statutes.

However, that very provision was in the Treasury Regulations from 1916 to 1932 (App. E, p. 60) and can well be said to have been adopted by Congress. Therefore, if the often followed rule, that Congress, in reenacting a statute without change for years, adopts the consistent regulations in interpretation thereof, be given the force of law, it makes no difference whether this provision be in the law or in the regulations. It is the law.

True, also, the claimant for a refund under Title VII, Revenue Act of 1936, must prove that he sustained the economic burden of the tax. (*Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337.)

However, that was the case under Section 424, Revenue Act of 1928, and Section 621, Revenue Act of 1932. (App. D, pp. 51, 54.) It is the case now, un-

der Section 2407 of the Internal Revenue Code, dealing with Retailers' Excise Tax, and under Section 3443 thereof, dealing with Manufacturers' Excise and Import taxes. (App. D, pp. 50-51.)

There is no peculiarity between this case and income or other tax cases, insofar as claims for refund are concerned, because of the statute, even though it deals with the particular subject of processing taxes. In all refund cases, the claim must contain the grounds, and factual data must be given the Commissioner at some time.

The large number of cases dealing with Section 424, Revenue Act of 1928, Section 621, Revenue Act of 1932, *and* with the various income and profits tax statutes, to which reference will be made herein, are mute testimony that, insofar as the Bureau of Internal Revenue has been concerned, there is no difference between this case, under this statute, and the cases under other statutes. If there were, the Bureau could not possibly justify the position it has taken, in these other cases, including income tax cases, that the proof must accompany the claim, practically all of which cases the Bureau has lost, where the facts justified holding that there has been a waiver of any formal defect in the claim for refund.

What then of just, fair, reasonable and usual administrative practice? It does not only *not* require a negative answer—it requires an affirmative answer, to the question submitted by Petitioner.

In the discussion which follows, Petitioner is quite aware of the well-established principle that the Government has the power and the right to determine for itself, by law and by proper regulations which have

the force of law, the conditions upon which it consents to refund tax. (*Nichols* v. *United States*, 7 Wall, 122.)

The question presented here is—when are the conditions of the regulations deemed waived, where a timely claim for refund has been filed? More particularly, Petitioner having filed a timely claim for refund, on the facts present in this case, not the least of which is—there having been an examination of the claim on the merits, at which time the Commissioner obtained all of the proof lacking on the face of the claim—is the Commissioner deemed to have waived the conditions of the Treasury regulation relating to such proof?

An examination of administrative practise and of Court decisions respecting it, always within the framework of the statute, requires an affirmative answer.

A return is made. A tax is paid. The Commissioner audits the return. (If no return is filed, he or his agent, may prepare and file one. (I. R. C. Sec. 3612), (App. D, p. 52). If no return is filed, the tax due may still be paid.)

If the tax, or any part thereof, is erroneously paid, the Commissioner, on his own motion, may refund so much of the tax as was erroneously paid. (I. R. C. Sec. 3770, App. D, pp. 52-53), until the statutory period within which a claim is required to be filed has expired.

Thereafter, the Commissioner may not refund tax erroneously paid, unless a claim for refund has been filed. (I.R.C. Sec. 3774, App. D, pp. 53-54.)

If such a claim has been filed, then the Commis-

sioner has the power thereafter to refund tax erroneously paid. (I. R. C. Secs. 3770 and 3774.)

After a claim has been filed, no suit may be brought, within six months after the filing of the claim, or more than a prescribed number of years after the notice of its rejection has been sent the claimant by registered mail. (I. R. C. Sec. 3772, App. D, p. 53.)

Even though a claim was filed, if no suit has been brought within the prescribed statutory period, the Commissioner may not thereafter refund any tax erroneously paid. (I. R. C. Sec. 3772.) However, if a suit has been brought within the time fixed by statute, then again does the Commissioner regain the power to refund tax erroneously paid. (I. R. C. Secs. 3770 and 3772.)

These powers and limitations on the powers, of the Commissioner, and on the rights of taxpayers, to a refund of tax erroneously paid, are fixed by statute and are jurisdictional.

Neither the Commissioner nor the Courts have the power to extend the statute in any of these respects. *Tucker* v. *Alexander*, 275 U. S. 228.

The claim for refund thus must be timely, i.e., it must be filed within the statutory period prescribed, and suit must be timely filed. Petitioner has complied with these statutory provisions. The Commissioner has, therefore, at all times, had the power to make a refund to Petitioner.

The claim for refund may be amended.

(1) It may be amended, completely to change the grounds, *within* the statutory period of limitations and prior to rejection. *Tucker* v. *Alexander, supra.*

(2) It may not be amended, completely to change the grounds *after* the statutory period of limitations has run and prior to rejection. *Real-Estate Land Title Co.* v. *United States*, 309 U. S. 13; *United States* v. *Garbutt Oil Co.*, 302 U. S. 528; *United States* v. *Felt & Tarrant Mfg. Co.*, 283 U. S. 69.

(3) It may be amended from a general claim to a specific claim within the terms of the general claim, after the statutory period of limitations and prior to rejection. *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62; *United States* v. *Factors & Finance Co.*, 288 U. S. 89.

(4) It may not be amended from a specific ground to another specific ground, (especially if previously waived), after the statutory period of limitations has run, and prior to rejection. *United States* v. *Garbutt Oil Co., supra; United States* v. *Andrews*, 302 U. S. 517; *United States* v. *Prentiss & Co.*, 288 U. S. 73.

(5) No claim for refund may be amended *after* the statutory period of limitations has run and *after* rejection.

These rules are those of the statutes and of this Court, on the basis of statutory provisions, guided somewhat by rules of pleading—but not "slavishly." Those cases cited are those much relied upon by Respondent. None of the foregoing rules, however, are applicable to the question herein presented. We are dealing herein—not with a failure to comply with the statute, but with regulations, and with proper administrative practise, in a proceeding in equity.

In the matter of administrative practise, in all decency, the Commissioner should refund all money illegally collected, so long as he has the power to do

so, and he does so constantly. When he is no longer permitted to do so by statute, he may not make a refund.

In thousands of cases, there arises a debatable question respecting the overpayment of tax. The tax is paid, and a timely claim for refund is filed. If the claim is complete, no question arises. If all of the facts in support of the claim for refund are not, at that time, presented under oath, what then?

The Commissioner has the matter completely in his hands. He may reject the claim for refund promptly. *United States* v. *Memphis Cotton Oil Co., supra, Memphis Cotton Oil Co.* v. *United States*, 59 F. (2d) 276. He has done so many times, a fact to be noted from many cases which have gone to Court. For an example, see *Morristown Knitting Mills* v. *United States*, 42 F. Supp. 817.

On the other hand, very frequently, the Commissioner has given the claimant every opportunity to present the factual material lacking on the face of the claim for refund, to facilitate research and so that he may be apprised of the merits of the claim, so that the question involved may be settled administratively and without litigation, if possible—the very purpose of the regulations. *United States* v. *Memphis Cotton Oil Co., supra, Bonwit Teller & Co.* v. *United States*, 283 U. S. 258, *Samara* v. *United States*, 129 F. (2d) 594, cert. den. 317 U. S. 686, *United States* v. *Elgin National Watch Co.*, 66 F. (2d) 344; *Jaubert Bros.* v. *United States*, 50 F. Supp. 366, *Ney* v. *United States*, 33 F. Supp. 554, and innumerable other cases.

This is good administrative practise—and the very

practise which was followed in the subject case, until the very day the claim was rejected.

If the claimant for refund relies on a legal conclusion of impossibility of proof, his claim must be rejected. *Anniston Mfg. Co.* v. *Davis, supra; Landrum* v. *Commissioner*, 122 F. (2d) 857; *Tennessee Cons. Coal Co.* v. *Commissioner*, 117 F. (2d) 452; *Lee Wilson & Co.* v. *Commissioner*, 111 F. (2d) 313, 123 F. (2d) 232, *Morristown Knitting Mills* v. *United States, supra.* (In these cases, there was no examination of the merits of the claim for refund, and the Commissioner had no facts or data before him.)

If the claimant refuses to produce such evidence as he has, again must his claims be rejected, *Landrum* v. *Commissioner, supra; Tennessee Cons. Coal Co.* v. *Commissioner, supra; Lee Wilson & Co.* v. *Commissioner, supra.*

If the claimant ignores repeated requests to furnish evidence lacking on the face of the claim, he has no basis for a suit upon the rejection of the claim. *Samara* v. *United States, supra; Jaubert Bros.* v. *United States, supra.* (In these cases, there was no examination of the merits of the claim for refund, and the Commissioner had no facts or data before him.)

Frequently, also, the Commissioner makes a thorough examination of the claim on the merits, despite the fact that the claim for refund is defective in form. When he does so, and when, as here, the claimant produces all of his books and records, and the Commissioner obtains all of the facts and data lacking on the face of the claim, so that he is not

misled or deceived, but has everything, and perhaps more than, he would have had in the original claim, what then? The Commissioner then, in all fairness, should be deemed to have waived the regulatory requirements that the claim for refund contain such data.

This Court has held that the Commissioner has the power, expressly and by his acts, to waive a defect in the form of a claim.

In *Tucker* v. *Alexander*, *supra*, it was held that the Commissioner, through his agent or counsel, could waive a defect in the form of the claim by stipulation at the trial.

In *Bonwit Teller & Co.* v. *United States*, 283 U. S. 258, it was held that the acceptance of a waiver of the statute of limitations relating to the assessment of tax, plus a letter which apprised the Commissioner of all of the facts, in the presence of an admitted overpayment of tax, constituted a waiver of the requirement that a formal claim be filed.

The facts present in the instant case require a similar holding. It is logical to apply the philosophy of those cases to this case, without the necessity of going even as far as this Court went in the latter case.

The only difference in the cases would seem to be that, in those cases, the Commissioner admitted an overpayment of tax, a question going to the merits; whereas, in this case, he denied that Petitioner was the taxpayer, another question going to the merits. However, such questions do not affect the question of a waiver of a defect in the form of the claim by the Commissioner, by reason of his examination of

the claim on the merits. Surely, the question of such a waiver by the Commissioner should not depend on the question of the Commissioner's determination that tax has, or has not, been overpaid—which is a question for the Courts to determine, or at least to review.

While this Court has twice found it unnecessary to its decision to decide the specific question involved herein, when raised, (*United States* v. *Andrews*, supra; *United States* v. *Memphis Cotton Oil Co.*, supra) and has never decided it, the lower courts have frequently passed upon it, and practically uniformly, in favor of the claimant for refund, on the basis of the decisions of this Court in *United States* v. *Memphis Cotton Oil Co.*, supra; *Bonwit Teller & Co.* v. *United States, supra;* and *Tucker* v. *Alexander, supra.*

In *Memphis Cotton Oil* v. *United States*, 59 F. (2d) 276, the Court of Claims had this very question before it and said, at pages 279-280:

> "He had authority under the statute to allow and refund such overpayment as he might determine had been made the basis of any facts before him at the time the claims were filed, or upon facts thereafter obtained by him from an examination of the plaintiff's books and records.
>
> * * *
>
> "The Commissioner therefore, prior to his consideration of the claim and before he had taken any action thereon, was fully informed as to the reasons for the overpayments and the de-

tailed facts to support the same. He was fully advised, and, so far as concerned his jurisdiction and authority to act under the statute with respect to the claimed overpayments, it made no difference whether the facts showing the overpayments were furnished in the first instance by the plaintiff as part of its claims for refund or were already in the possession of the Commissioner, or were obtained by him after the filing of the claims by an examination and audit of the plaintiff's books of account. *Factors & Finance Co., Inc.,* v. *United States, supra.*

"The plaintiff might have amended the claim before the Commissioner had acted thereon so as to state the facts *relied* upon, but the facts obtained by the Commissioner before he had acted rendered amendment unnecessary and fulfilled the requirement of the regulations that all facts relied upon should be set forth by the taxpayer."

This is completely in consonance with the holding in *Tucker* v. *Alexander, supra,* quoted hereinabove; and with this Court's observation in the *Bonwit Teller* case, supra, in which it said, at page 265:

"The Commissioner within the time allowed was advised of the grounds on which the plaintiff's right to refund rested, and was not misled or deceived by plaintiff's failure to file formal claim and was fully warranted in holding that the waiver and earlier documents were sufficient." Citing *Tucker* v. *Alexander, supra.*

The Circuit Court for the Third Circuit, in *Bethlehem Baking Co.* v. *United States*, 129 F. (2d) 490; the Circuit Court of Appeals for the Fifth Circuit, in *United States* v. *Humble Oil & Refining Co.*, 69 F. (2d) 214; the Circuit Court of Appeals for the Seventh Circuit, in *United States* v. *Elgin National Watch Co.*, *supra*; and the Circuit Court of Appeals for the Tenth Circuit; in *Reynolds* v. *McMurray*, 77 F. (2d) 740, and in *Howbert* v. *Penrose*, 38 F. (2d) 577, upon varying facts, have held, just as did the Court of Claims, in the *Memphis Cotton Oil case*, *supra*, that an examination of a claim for refund upon the merits, at which time the Commissioner obtains all of the facts lacking on the face of the claim for refund, constitutes a waiver of any such defect in the claim.

Several district courts have adopted the same rule. See *Bricker Baking Co.* v. *Rothensies*, 46 F. Supp. 742; *Cudahy Packing Co.* v. *United States*, 37 F. Supp. 563, reversed on other grounds 126 F. (2d) 429; *Zeller* v. *United States*, 35 F. (2d) 870; *Hutzler Bros. Co.* v. *United States*, 33 F. (2d) 801; *Ney* v. *United States*, 33 F. Supp. 554; *S. & R. Grinding & Machine Co.* v. *United States*, 27 F. Supp. 429; *Shotwell Mfg. Co.* v. *Harrison*, 27 F. Supp. 422; *Con-rod Exchange, Inc.* v. *Henricksen*, 27 F. Supp. 427; *University Distributing Co.* v. *United States*, 22 F. Supp. 794; *United States Paper Exports Assn.* v. *Bowers*, 6 F. Supp. 735; *Weihman* v. *United States*, 4 F. Supp. 155 and *Union Trust Co. of Pittsburgh* v. *McCaughn*, 24 F. (2d) 459.

In the Weihman case, the District Court said, pp. 157-158:

"In *United States* v. *Memphis Cotton Oil Company*, 288 U. S. 62, 53 S. Ct. 278, 281, 77 L. Ed. 619 (January 9, 1933), the court said:

" 'The Commissioner has the remedy in his own hands if the claim as presented is so indefinite as to cause embarrassment to him or to others in his Bureau. He may disallow the claim promptly for a departure from the rule. If, however, he holds it without action until the form has been corrected, and still more clearly if he hears it, and hears it on the merits, what is before him is not a double claim, but a claim single and indivisible, the new indissolubly welded into the structure of the old.'

"This language is applicable here. In the case at bar the Commissioner holding the claim without action, heard it and heard it on the merits. True, the form was never corrected (that is, it was never formally amended), but the proceedings before the Commissioner was certainly such as to give taxpayer to understand that formal amendment would be unnecessary. . . .

"From an administrative point of view it was the only practical and sensible way to handle the whole situation and, obviously, the Commissioner did not think he was in danger of being misled or prejudiced as to his adversary's case nor did he, until the last minute, indicate the slightest intention of invoking the provisions of the statute and regulations, designed solely to protect him against such an event."

The facts of this case, set forth hereinabove both in detail and in summary, clearly bring this case within the decisions of the Court of Claims, in the *Memphis Cotton Oil case*, of the District Court, in the *Weihman* case, and of the various decisions of the other courts cited at page 37, *supra*. All that is said in those cases applies with equal force to the subject case, and the reasoning in those cases is fundamentally sound.

Had this claimant, between March, 1939, and May 22, 1941, filed a paper, under oath, containing the data which the Deputy Collector already had, its claim would be valid. Is this the sort of empty gesture which the statute and regulations require? Is that what this Court meant, when it said, in *Tucker* v. *Alexander, supra*, at page 231:

> "The statute and the regulations must be read in the light of their purpose. They are devised, not as traps for the unwary, but for the convenience of government officials in passing upon claims for refund and in preparing for trial. . . If the Commissioner is not deceived or misled by the failure to accurately describe the claim, as obviously he was not here, it may be more convenient for the government and decidedly in the interest of an orderly administrative procedure that the claim should be disposed of upon its merits on a first trial without imposing upon government and taxpayer the necessity of further legal proceedings. We can perceive no valid reason why the requirements of the regulations may not be waived for that purpose."

Has the Government been injured, or misled, or deceived, in this case? A timely claim was filed. The Commissioner received all of the information on which any suit would, or could, be based. The statute was complied with, and there was compliance with the regulations, in substance, if not literally. All that was lacking was an oath. Yet, an affidavit would not have proved the facts recited therein, as would and did the books of Petitioner, which Respondent had.

This case is more like a case involving necessary evidence than one dealing with pleadings, as is the situation in a case involving an amendment to a claim. In a suit, if Petitioner had failed in its proof, but Respondent, failing to rest, had supplied the missing proof, Petitioner's case would thereby have been established. The same would apply, in a case in which fraud is charged, where the Government has the burden of proof. If the Government fails to prove one element, and the Defendant supplies it, the case is none the less proved. So here. The Petitioner failed to present all of the required proof at the time of the filing of the claim for refund. Respondent obtained the proof as a result of his own investigations. The claim was otherwise valid. Is the claim to fail, because Petitioner did not swear to the proof, found by the Commissioner in support of the claim? Is that *present* equity?

In *United States* v. *Jefferson Electric Mfg. Co.*, 291 U. S. 386, this Court had before it the refund of automobile accessory manufacturers' taxes, in connection with the refund of which the taxpayer was required to show that it had borne the burden of the

tax and had not passed it on, directly or indirectly. (Sec. 424, Revenue Act of 1928, App. D, p. 54, the model for Sec. 21 (d) of the Agricultural Adjustment Act, and Title VII, Revenue Act of 1936. Cf. Sec. 903 Revenue Act of 1936, (App. A, p. 2) and Regs. 74, Revenue Act of 1928, and Regs. 77-94, (1932-1936), App. E.) This Court said, at pages 402-403:

> "The present contention is particular faulty in that it overlooks the fact that the statute providing for refunds and for suits on claims therefor proceed on the same equitable principles that underlie an action in assumpsit for money had and received. Of such an action it rightly has been said:
>
> " 'This is often called an equitable action and is less restricted and fettered by technical rules and formalities than any other form of action. It aims at the abstract justice of the case, and looks solely to the inquiry, whether the defendant holds money, which *ex aequo at bono* belongs to the plaintiff. It was encouraged and, to a great extent, brought into use by that great and just judge, Lord Mansfield, and from his day to the present, has been constantly resorted to in all cases coming within its broad principles. It approaches nearer to a bill in equity than any other common law action.' "

It is this very principle that Petitioner requests this Court to apply to the instant case, urging, of course, that, if such a principle is to be applied, it should be applied to support a refund, quite as well as to support the conditions of a refund.

In *Anniston Mfg. Co.* v. *Davis, supra,* this Court, citing the *Jefferson Electric Mfg. Co.* case, held that the provisions of Title VII of the Revenue Act of 1936 afford a claimant for the refund of processing tax collected under the Agricultural Adjustment Act of May 12, 1933, as amended, due process of law. The philosophy back of this statute, and of that decision, requires consideration in connection with the instant case.

The Agricultural Adjustment Act presupposed that the processing tax would be passed on to the consumer. That is why a floor stocks tax was imposed, when the processing tax went into effect, — by Section 16 thereof—so that all goods manufactured of the raw material involved would thereafter move into channels of trade equally taxed. It is also why Section 16 also provided that, when a processing tax terminated, there would be an automatic refund on all floor stocks manufactured of the raw material, the processing of which had been taxed, so that all similar articles would thereafter move into channels of trade equally untaxed. (App. D, pp. 55-56.)

During the period of the Agricultural Adjustment Act, from May 12, 1933, to January 6, 1936, some $980,000,000 were illegally collected as processing taxes.

At the same time, in the last half of 1935, injunctions were obtained, and some $300,000,000 of such taxes were not paid, a part thereof being deposited in escrow in Court, and a part not.

Lest unjust automatic refunds result, under Section 16, Congress sought to plug a loophole by Section 21 (d) of the Agricultural Adjustment Act, by

an amendment passed on August 24, 1935, two days before Congress adjourned. (App. D, pp. 56-58.) In *Rickert Rice Mills* v. *Fontenot*, 296 U. S. 569, and 297 U. S. 110, this Court enjoined collection of the processing tax, due after August, 1935, pending its decision, if placed in escrow, and subsequently ordered the amounts placed in escrow repaid, because the collection of the processing tax had been held illegal in *Butler* v. *United States*, *supra*.

The validity of Section 21 (d) having been seriously questioned in the *Rickert Rice Mills* case and in other cases, Congress, upon reconvening, sought to correct the alleged defects. Congress, in June, 1936, passed Titles IV and VII of the Revenue Act of 1936, as a substitute for Sections *16*, 17 and *21 (d)* of the Agricultural Adjustment Act. Title VII was, in substance, an adaptation of Section 424 of the Revenue Act of 1928, to be applied to different facts. (App. A, pp. 1-7, App. D, pp. 54-55.)

The philosophy of Congress, in Title VII, recognized by the Supreme Court in the *Anniston Mfg. Co.* case, *supra*, was simply this:

Tax has been illegally collected. However, that tax *may* have been passed on to someone else, so that the taxpayer has suffered nothing. As between the taxpayer, who passed on the tax, and the Government, which illegally collected it, such taxpayer has no greater moral right to the money than has the Government and should not get it back. Therefore, a taxpayer may be required to prove that he has borne the burden of the tax, as a condition to its recovery.

The statute and the decision in the *Anniston Mfg.*

*Co.* case thus have as their entire basis—the application of good morals, of the equitable principle that the taxpayer should not be unjustly enriched. The prevention of unjust enrichment, in an economic sense, underlies both the statute and the decision upholding it.

It is respectfully urged that, if the foregoing respecting the Court's interpretation of the statute be accepted as true, the same broad principle of equity must be applied to the Government, in considering a particular claim under the statute. Following such a view, the instant claim must be considered on the merits. The uncontroverted facts require it.

The Court below most certainly spurned the philosophy of this Court in the *Jefferson Electric Mfg. Co.* case and the *Anniston Mfg. Co.* case, as well as the very sound reasoning of the other lower courts, which have held that, upon an examination of a timely claim for refund, on the merits, the Commissioner is deemed to have waived any formal defect in the claim, when it said (R. 138):

> "It makes no difference to the taxpayer what was his mistake; . . . he awakes to learn that it is never safe to put his trust in officials. . . . The result is often extremely harsh, as this case shows; but he who deals with the Government must dot his i's and cross his t's; and if he assumes that he may rely upon the ordinary rules which apply as between individuals, he is doomed to disappointment."

Are the equities upon which this Court has based its decision and has upheld the validity of Sec. 424,

Revenue Act of 1928, and of Title VII of the Revenus Act of 1936 all one-sided? What becomes then of the principle that we are to determine "whether the defendant (the United States) holds money, which *ex aequo et bono* belongs to the plaintiff" (Petitioner)?

The two foregoing decisions, in *Jefferson Electric Mfg. Co.* v. *United States, supra,* and *Anniston Mfg. Co.* v. *Davis, supra,* are based on the fair and equitable principle that, while the Government has illegally collected tax, the taxpayer, in all justice, should not get it back if he passed it on and thus has not suffered economically, and that a requirement of proof to that end is reasonable, fair and legal. But the Government still holds illegal tax.

Should not the equally fair, equitable rule be then—if there is substantial compliance with the statute—compliance with the grant of Congress to be sued—if the Government, as a result of its investigations of a claim for the refund of the tax on the merits—has all of the facts—is fully apprised of the grounds of that claim and has the evidence in support thereof—any formal defect in the claim for refund is deemed waived?

The Commissioner has the unquestioned power to waive a formal defect in any claim for refund. If he is deemed to have waived such a defect, under the cases cited *supra,* he should most certainly be deemed to have waived any such defect here. If he can do it expressly—as he can—if he can do it by implication—in a case in which he has concluded that tax has been overpaid—under facts otherwise exactly similar to those here present he should be

held to have waived such a defect, even in a case in which he has not necessarily concluded that the tax has been overpaid.

Petitioner urges that the Commissioner waived any defect in the form of Petitioner's claim for refund, and that Petitioner is entitled to a trial on the merits.

## II.

*If the claims for refund of Petitioner and Niagara be considered together, Petitioner's claim is not defective, or again any defect in form has been waived.*

In this respect, the facts in the instant claim clearly depart from the facts in any other known case—but again the principle is of general application.

Petitioner and Niagara filed joint processing tax returns for one and one-half years and Niagara filed such returns for both for eleven months. (R. 110-111, 113-124.)

Then, in 1936, they filed joint and several claims for the refund of the processing tax paid, with the same Collector. (R. 11-19.)

Niagara subsequently, on June 30, 1937, filed a complete claim for the refund of all of the tax paid by both, and Petitioner later, on August 15, 1938, filed an "Amendment to Claim" for the refund of the tax paid by it only, all with the same Collector. (R. 20-39.)

All of these documents were part of one file in the Bureau of Internal Revenue.

The Bureau then examined both claims on the merits, and to do this the Bureau examined their

common books of account—common records and common bank account and checks. (R. 126-129, App. B, pp. 13-16.)

Thus, in the file of Petitioner (and of Niagara), the Commissioner had the same sworn proof he would have had, if Petitioner had incorporated in its claim the figures contained in Niagara's claim, subject to being checked from the books.

Under these peculiar circumstances, can it not be said that all of the proof in support of Petitioner's claim was filed and under oath?

This does not require saying that the claim for refund of Niagara is the claim for refund of Petitioner, as the Circuit Court of Appeals said. Of course, there is no reason why it could not be, if Petitioner clearly and specifically, under oath, had incorporated the claim of Niagara by reference, as part of its own claim, and, therefore, its data also, which data was lacking in Petitioner's claim. However, we need not go that far.

While we do not know what claim was being amended, probably the 1936 claims on Form 843—but not necessarily, (and Dickinson, the then President, is dead), we do know that all returns—all claims—and all books, records and reports were in one file, that both claims were examined on the merits, and that Niagara's claim was considered valid, at least in part. Is this not sufficient to cure a formal defect—where all that is involved are regulations written by the Commissioner for his own protection—so that he will be fully informed? In this case he was unquestionably fully informed.

The Commissioner was not misled. If anything,

the acts and omissions of the Commissioner misled the taxpayer. He received the claim in March, 1938. It was too late and invalid, but in September, 1938, he asked for Petitioner's books, in order to examine Niagara's claim, because he knew of their interrelationship. He was examining a valid claim *then*. By 1939, Petitioner's claim was validated, but it was not examined, until late in 1940, and finally, after its examination on the merits, was rejected in 1941.

From 1933 to 1941, Niagara and Petitioner were treated as one; *erroneously*, but still as one. Under all these facts, in order to determine who *ex aequo et bono* is entitled to the illegal tax, by means of a trial on the merits—should it not be held that the Commissioner waived any defect in the form of the claim for refund?

Petitioner's position on this point is amply supported by the decisions cited at pages 32 to 38, supra.

In true keeping with the principle so often followed by this Court and by the many lower courts, that the Commissioner, to facilitate research and to settle claims administratively, must be advised of the true nature of the claim for refund and of the facts in support of it—and when he has been so fully advised, the conditions of the statute and of the regulations have been met—will not justice and the Congressional will better be served by a holding that, if the Commissioner, through his agents, obtained all of the facts and basic data, which would make a claim formally defective valid, if it had been added to the claim, the Commissioner is deemed to have waived such defect in the claim?

On the facts related under Point II alone, it is

urged that the Commissioner should be held to have waived any formal defect in Petitioner's claim for refund, and that Petitioner is entitled to a review of the Commissioner's rejection of the claim—on the merits.

## CONCLUSION

The judgment of the Circuit Court of Appeals should be reversed, and a review of the merits by the Tax Court should be ordered.

Respectfully submitted,

PREW SAVOY,
*Attorney for Petitioner.*

February, 1945.

## APPENDIX D

### Statutes Referred to But Not Involved

INTERNAL REVENUE CODE. C. 2, 53 Stat. 1.

SEC. 2407. CREDITS AND REFUNDS. (Retailers' Excise Taxes.)

. . . (b) No overpayment of tax under this chapter shall be credited or refunded, in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, (1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the amount of tax from the purchaser, or (2) that he has repaid the amount of the tax to the purchaser of the article, or unless he files with the Commissioner written consent of such purchaser to the allowance of the credit or refund.

SEC. 3443. CREDITS AND REFUNDS. (Manufacturers' Excise and Import Taxes.)

. . . (d) No overpayment of tax under this chapter shall be credited or refunded (otherwise than under subsection (a)), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, (1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the amount of tax from the vendee, or (2) that he has repaid the amount of the tax to the ultimate purchaser of the article, or unless he files with the Commissioner written con-

sent of such ultimate purchaser to the allowance of the credit or refund.

Sec. 3443 is an adaptation of Sec. 621 of the *Revenue Act of 1932*, (C. 209, 47 Stat. 169), which follows:

SEC. 621. CREDITS AND REFUNDS.

(a) A credit against tax under this title, or a refund, ~~may~~ be allowed or made—

(1) to a manufacturer or producer, in the amount of any tax under this title which has been paid with respect to the sale of any article (other than a tire or inner tube) purchased by him and used by him as material in the manufacture or production of, or as a component part of, an article with respect to which tax under this title has been paid, or which has been sold free of tax by virtue of section 620, relating to sales of articles for further manufacture.

(2) to any person who has paid tax under this title with respect to an article, when the price on which the tax was based is readjusted by reason of return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance; in the amount of that part of the tax proportionate to the part of the price which is refunded or credited.

(b) Credit or refund under subsection (a) shall be allowed or made only upon compliance with regulations prescribed by the Commissioner with the approval of the Secretary.

(c) In no case shall interest be allowed with respect to any amount of tax under this title credited or refunded.

(d) No overpayment of tax under this title shall be credited or refunded (otherwise than under subsection (a)), in pursuance of a court decision or otherwise, unless the person who paid the tax estab-

lishes, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, (1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the amount of tax from the vendee, or (2) that he has repaid the amount of the tax to the ultimate purchaser of the article, or unless he files with the Commissioner written consent of such ultimate purchaser to the allowance of the credit or refund.

SEC. 3612. RETURNS EXECUTED BY COMMISSIONER OR COLLECTOR.

(a) Authority of Collector.—If any person fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, wilfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise.

(b) Authority of Commissioner.—In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise—

(1) To make return.—Make a return, or

(2) To amend collector's return.—Amend any return made by a collector or deputy collector.

SEC. 3770. AUTHORITY TO MAKE ABATEMENTS, CREDITS, AND REFUNDS.

(a) *To Taxpayers*—

(1) *Assessments and collections generally.*—Except as otherwise provided by law in the case of income, war-profits, excess profits, estate, and gift taxes, the Commissioner, subject to regulations prescribed by the Secretary, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without

authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected.

(2) *Assessments and collections after limitation period.*—Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

SEC. 3772. SUITS FOR REFUND.

(a) *Limitations.*

(1) Claim.—No suit or processing shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

(2) Time.—No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates.

SEC. 3774. REFUNDS AFTER PERIODS OF LIMITATION.

A refund of any portion of an internal revenue tax (or any interest, penalty, additional amount, or

addition to such tax) shall be considered erroneous—

(a) Expiration of Period for Filing Claim.—If made after the expiration of the period of limitation for filing claim therefor, unless within such period was filed; or

(b) Disallowance of Claim and Expiration of Period for Filing Suit.—In the case of a claim filed within the proper time and disallowed by the Commissioner if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the Board of Tax Appeals or the courts. If such agreement has been entered into, the running of such statute of limitations shall be suspended in accordance with the terms of the agreement.

REVENUE ACT OF 1928, C. 852, 45 Stat. 791

SEC. 424. REFUND OF AUTOMOBILE ACCESSORIES TAX.

(a) No refund shall be made of any amount paid by or collected from any manufacturer, producer, or importer in respect of the tax imposed by subdivision (3) of section 600 of the Revenue Act of 1924, or subdivision (3) of section 900 of the Revenue Act of 1921 or of the Revenue Act of 1918, unless either—

(1) Pursuant to a judgment of a court in an action duly begun prior to April 30, 1928; or

(2) It is established to the satisfaction of the Commissioner that such amount was in excess of the amount properly payable upon the sale or lease of

an article subject to tax, or that such amount was not collected, directly or indirectly, from the purchased or lessee, or that such amount, although collected from the purchaser or lessee, was returned to him; or

(3) The Commissioner certifies to the proper disbursing officer that such manufacturer, producer, or importer has filed with the Commissioner, under regulations prescribed by the Commissioner with the approval of the Secretary, a bond in such sum and with such sureties as the Commissioner deems necessary, conditioned upon the immediate repayment to the United States of such portion of the amount refunded as is not distributed by such manufacturer, producer, or importer, within six months after the date of the payment of the refund, to the persons who purchased for purposes of consumption (whether from such manufacturer, producer, importer, or from any other person) the articles in respect of which the refund is made, as evidenced by the affidavits (in such form and containing such statements as the Commissioner may prescribe) of such purchasers, and that such bond, in the case of a claim allowed after February 28, 1927, was filed before the allowance of the claim by the Commissioner.

## AGRICULTURAL ADJUSTMENT ACT OF MAY 12, 1933. C. 25, 48 Stat. 31

Sec. 16. (a) Upon the sale or other disposition of any article processed wholly or in chief value from any commodity with respect to which a processing tax is to be levied, that on the date the tax first takes effect or wholly terminates with respect to the commodity, is held for sale or other disposition (including articles in transit) by any person, there shall be made a tax adjustment as follows:

(1) Whenever the processing tax first taxes effect, there shall be levied, assessed, and collected a tax to be paid by such person equivalent to the amount of the processing tax which would be payable with respect to the commodity from which processed if the processing had occurred on such date.

(2) Whenever the processing tax is wholly terminated, there shall be refunded a sum in an amount equivalent to the processing tax with respect to the commodity from which processed.

## AGRICULTURAL ADJUSTMENT ACT OF MAY 12, 1933, AS AMENDED AUGUST 24, 1935. C. 641, Sec. 30, 49 Stat. 750, 770

Sec. 21. . . . .

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or

included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person

who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such courts based upon the amount in controversy.

## REVENUE ACT OF 1939. C. 247, Sec. 405, 53 Stat. 862, 884

SEC. 405. FILING OF CLAIMS FOR REFUND OF AMOUNTS COLLECTED UNDER THE AGRICULTURAL ADJUSTMENT ACT.

Section 903 of the Revenue Act of 1936 (relating to expiration of time for filing claims for refund of amounts paid under the Agricultural Adjustment Act) is amended by striking out "July 1, 1937" and inserting in lieu thereof "January 1, 1940."

## APPENDIX E

### Pertinent Language of the Regulations Referred to But Not Involved

"All the facts relied on in support of the claim should be clearly set forth under oath."

Regs. 33, Art. 265, Revenue Act of 1916
Regs. 45, Art. 1036, Revenue Act of 1918
Regs. 62, Art. 1036, Revenue Act of 1921
Regs. 65, Art. 1306, Revenue Act of 1924
Regs. 69, Art. 1304, Revenue Act of 1926
Regs. 74, Art. 1254, Revenue Act of 1928

"The claim must set forth in detail and under oath each ground upon which a refund is claimed, and facts sufficient to apprise the Commissioner of the exact basis thereof. . . . A claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund."

[1]Regs. 77, Art. 1254, Revenue Act of 1932
Regs. 86, Art. 322-3, Revenue Act of 1934
Regs. 94, Art. 322-3, Revenue Act of 1936
Regs. 101, Art. 322-3, Revenue Act of 1938
Regs. 103, Art. 19.322-3, Internal Revenue Code
Regs. 111, Art. 29.322-3, Internal Revenue Code, for tax years commencing after December 31, 1941.

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[1] Regs. 46, Revenue Act of 1932, which covers Sec. 621 (Refund of Manufacturers' Excise Tax), now Sec. 3443 of the Internal Revenue Code, makes no distinction as to claims for refund of various taxes, except as to the facts to be established.